

# GENERAL CONDITIONS OF SALE



## 1. Scope

- 1.1 These General Terms and Conditions of Business shall apply to the sale of goods and services between companies and are valid for both the delivery of such products and related services. Software is governed primarily by the software conditions issued by the Austrian Electrical and Electronics Industry Association. Installation work is subject to the regulations of the Austrian heavy and weak current industry and those of the Austrian electrical and electronics industry for electro-medical technology.
- 1.2 Deviations from the conditions mentioned under Item 1.1 only take effect subject to the written approval of the seller.

## 2. Quotations

- 2.1 Seller quotations are regarded as non-binding.
- 2.2 Without the permission of the seller, no quotation or project documentation may be reproduced or made available to third parties. The return of the documentation may be demanded at any time and should the order to be placed elsewhere, is to be sent back to the seller immediately.

## 3. Contractual agreement

- 3.1 A contract is regarded as concluded once the seller has received written confirmation of the contract, following the receipt of the order, or has dispatched a delivery.
- 3.2 Information contained in catalogues and brochures, etc. as well as other written or verbal statements are only of material importance when the order confirmation refers to them in specific terms.
- 3.3 Subsequent alterations and supplements to the contract are only valid when confirmed in writing.

## 4. Prices

- 4.1 The prices are valid ex-works or ex-warehouse of the seller, excluding packing, loading and sales tax. If charges, taxes or other payments are required in connection with supply, these are to be borne by the purchaser. If direct delivery of the order has been agreed, this and any transport insurance required by the purchaser will be invoiced separately. However, this does include unloading and **loading**. Packaging will only be accepted back subject to express agreement.
- 4.2 In the case of orders that deviate from the overall quotation, the seller retains the right to make appropriate price changes.
- 4.3 Prices are based on costs at the time of the initial quotation. Should the costs increase in the period up to supply, the seller is entitled to adjust prices accordingly.
- 4.4 In the case of repair contracts, the performance recognised by the seller as appropriate will be provided and invoiced on the basis of the related expenditure. This applies to services and additional services, the necessity of which first becomes apparent in the course of the completion of the order. No special information of the purchaser is required in this regard.
- 4.5 The purchaser will be invoiced for expenses relating to the preparation of repair quotations or an expertise.

## 5. Delivery

- 5.1 The delivery period commences with the latest of the subsequent dates:
- Date of order confirmation.
  - Date of the fulfilment of the technical and commercial obligations and other preconditions incumbent upon the purchaser.
  - Date upon which the seller receives a prepayment or guarantee prior to the delivery of the goods.
- 5.2 Official or third party approval required for the fulfilment of conditions is to be obtained by the purchaser. Should such approval not be obtained in time, the delivery period is extended accordingly.
- 5.3 The seller is entitled to make partial or pre-deliveries and to invoice them. Should on-call delivery have been agreed, at the latest the goods are regarded as having been called up one year after ordering.

# GENERAL CONDITIONS OF SALE



- 5.4 Where situations arise that are unforeseen or cannot be influenced by the parties, such as acts of God, and where these hinder the fulfilment of the agreed delivery deadline, this is extended to include the duration of these circumstances. In particular, such circumstances include armed conflict, official intervention and bans, delays relating to transport and customs, transport damage, shortages of power and raw materials, labour disputes and the loss of an important sub-supplier that is difficult to replace. The aforementioned conditions also justify a prolongation of the delivery period when they apply to sub-suppliers.
- 5.5 Should a contractual penalty for delivery delays have been agreed between the contractual parties, this will be dealt with according to the following terms, whereby a deviation from one of the individual conditions does not affect the remainder. A delay in the fulfilment of supply, which can be proven to be the singular responsibility of the seller, entitles the purchaser to claim a contractual penalty of a maximum of 5% for each completed week of delay, but not in excess of 5% of the value of that part of the overall order, which due to the failure to supply an important item punctually, could not be employed and where the purchaser has incurred damages to this amount. Additional claims under the heading of a delay are excluded.
- 6. Passing of risk and place of performance**
- 6.1 The use and risk pass to the purchaser upon the departure of the delivery from the plant or warehouse of the seller, irrespective of the agreed type of pricing (e.g. delivery free, CIF, etc.). This also applies when supply takes place in the course of installation, or should the transport be completed, or organised and managed by the seller.
- 6.2 The place of performance for supply and performance is the venue at which the performance is completed. The risk related to supply or an agreed partial performance passes to the purchaser upon provision.
- 7. Payment**
- 7.1 Unless other conditions of payment have been agreed, 1/3 of the price is to be paid upon order confirmation, 1/3 at the halfway point of the delivery period and the remainder upon delivery. Irrespective of these payments, the VAT contained in the bill must be paid within 30 days of invoicing.
- 7.2 In the case of partial invoices, partial payments are to be made upon receipt of the respective billing. This also applies to clearing amounts, which are additional to the original total amount and relate to subsequent deliveries or other agreements, irrespective of the conditions of payment agreed for the main delivery.
- 7.3 Payments without deductions are to be made to the free paying agent of the purchaser in the agreed currency. The general acceptance of cheques or bills only takes place in lieu of payment. All related interest and charges (e.g. collection and discount expenses) are to be borne by the purchaser.
- 7.4 The purchaser is not entitled to withhold or offset payments for reasons of warranty claims or other counter-claims.
- 7.5 A payment is regarded as made on the day that it becomes available to the seller for disposition.
- 7.6 Should the purchaser be in arrears with an agreed payment of other obligations relating to this or other transactions, the seller can undertake the following without prejudicing other rights:
- Postpone the fulfilment of own obligations until this payment has been made, or other obligations have been met and claim a reasonable prolongation of the delivery period.
  - Call in all open claims from this or other transactions and charge default interest at a rate of 1.25% per month plus sales tax on the respective debt, unless the seller proves costs in excess of this amount. In all cases, the seller is entitled to invoice for preliminary litigation costs, in particular, reminder costs and legal expenses.
- 7.7 Agreed rebates or bonuses are subject to the prompt provision of the complete payment.
- 7.8 The seller retains ownership of all the goods supplied until complete payment of the invoiced amounts, including interest and costs, has been made. To secure the purchase price claim, the purchaser hereby assigns to the seller any claims relating to the further sale of reserved goods, even if these have been processed, altered or mixed and undertakes to make an appropriate entry into its books or on invoices. On request, the purchaser must make known to the seller the assigned claim together with the debtor and provide the information and documentation needed for a recovery of the debt and to inform the indebted third party of the transfer of the claim.

# GENERAL CONDITIONS OF SALE



In the case of seizure or other recourse, the purchaser is obliged to point out the right of ownership of the seller and to inform the latter immediately.

## 8. Warranty and acceptance of responsibility for defects

8.1 Subject to the fulfilment of the agreed conditions of payment, the seller is obliged to repair any design, material or production defects with a negative effect upon functionality that may exist at the date of hand-over in accordance with the stipulations of the following terms. No warranty claims can be made on the basis of information contained in catalogues, brochures, advertising materials, written or verbal statements, which have not been accepted into the contract.

8.2 The warranty period lasts 12 months, unless special warranty periods have been agreed for individual delivery items. This also applies to supplies and services, attached to a building or real property. The warranty period commences with the risk transfer in accordance with Item 6.

8.3 A prerequisite for warranty claims is that the purchaser has immediately made the defect known in writing. The purchaser has to immediately prove the existence of a defect and provide the seller with available information and data. In the case of a defect subject to warranty in accordance with Item 8.1, the seller can either choose to repair the defective article at the place of performance, have it returned for the purpose of repair, or provide an appropriate price reduction.

8.4 In the case of warranty, damage replacement or compensation claims owing to defects, which are asserted by customers of the buyer, claims of the buyer with regard to other related rejects shall only exist, when the seller is provided with documented evidence of the contract concluded between the buyer and the customer (e.g. customer receipt).

8.5 Should the seller manufacture an item on the basis of design information, drawings, models or other specifications of the purchaser, then the warranty of the seller only extends to completion according to the stipulated conditions.

8.6 Excluded from the warranty are defects originating from arrangement and installation not carried out by the seller, insufficient setting-up, a failure to adhere to the installation requirements and conditions for use, overloading of the components beyond the performance levels stated by the seller, negligent or incorrect handling and the use of unsuitable supplies. This also applies to defects, which can be traced to materials supplied by the purchaser.

In addition, the seller does not provide a warranty for damage caused by third parties, atmospheric discharges, overloads and chemicals. The warranty does not extend to the replacement of components subject to natural wear and tear. In the case of the purchase of second-hand goods, the seller does not provide a warranty.

8.7 A liability of the seller is excluded should the defect or damage derive from the use by the purchaser of a battery with insufficient capacity or rated power for the foreseen application; further when a conventional starter battery is employed by the purchaser instead of a different type as recommended by the manufacturer (for example AGM or EFB battery), or when instead of a long-term dischargeable battery merely a conventional starter battery is installed (for example in the case of a caravan, camper, boat). The use of the battery must always comply with Banner's classification recommendation as contained in the Book of Power at <http://www.bannerbatterien.com/banner/aktuelles/news/artikel/gesamtkatalog1.php> or the product finder <http://www.bannerbatterien.com/banner/produkte/finder/index.php> or correspond with the battery type stipulated by the manufacturer of the device (OE number, performance requirement), otherwise resulting defects and damage shall not justify any liability of the seller.

8.8 Claims pursuant to § 933b ABGB lapse with the expiry of the period contained in Item 8.2.

8.9 The conditions 8.1 to 8.8 also apply to each case of defects arising for other legal reasons.

## 9. Withdrawal from the contract

9.1 Unless a special regulation has been agreed, the prerequisite for the withdrawal of the purchaser from the contract is a delay in delivery, which can be traced to the gross negligence of the seller and the unsuccessful completion of a reasonable extension to the delivery period. Withdrawal must be made known in the form of a registered letter.

9.2 Irrespective of other rights, the seller is entitled to withdraw from the contract when:

- a) The completion of the order, the begin or continuation of contractual performance is impossible, or despite a reasonable extension, has been further delayed for reasons that are the responsibility of the purchaser.

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# GENERAL CONDITIONS OF SALE



- b) When concerns relating to the solvency of the purchaser have arisen and despite the request of the seller, the purchaser neither makes a prepayment, nor provides suitable collateral.
- c) Due to the circumstances listed under item 5.4, the extension to the period of delivery amounts to more than half of the period agreed originally, or at least 6 months.

- 9.3 Withdrawal from the contract can also be declared for the reasons listed above with regard to an open portion of the supplies or services.
- 9.4 Should insolvency proceedings be initiated against one of the contractual parties, or an application for the introduction of insolvency proceedings be rejected on the grounds of a lack of assets, the other contractual party is entitled to withdraw from the contract without setting a period of grace.
- 9.5 In the case of withdrawal and irrespective of the damage claims of the seller, including preliminary litigation costs, supplies and services already completed are to be calculated in accordance with the contract and paid. This also applies to supplies and services not yet accepted by the purchaser, as well as preparations made by the seller. Instead, the seller also has the right to demand the return of items delivered previously.
- 9.6 Other consequences of withdrawal are excluded.

## 10. Liability

- 10.1 The seller is liable for damage outside the area of application relating to the product warranty only where gross negligence can be proved under the terms of legal stipulations. Liabilities of the seller for minor negligence, restitution for subsequent damage and asset losses, lost savings, interest losses and damages derived from third party claims are excluded.
- 10.2 Any claims for damages are excluded in the case of a failure to adhere to the conditions relating to installation, commissioning and use (e.g. as contained in the operating instructions) or the official conditions of certification.
- 10.3 Should contractual penalties be agreed, additional claims under the respective items are excluded.

## 11. Assertion of claims

Unless shorter deadlines have been separately agreed in individual cases, or are foreseen under the terms of legal stipulations, all purchaser claims must be asserted before a court within a period of three years following the transfer of risk, otherwise the claims lapse.

## 12. Commercial rights and copyright

- 12.1 Should an item be manufactured by the seller in accordance with design instructions, drawings, models or other specifications provided by the purchaser then the purchaser has to indemnify the seller against claims in the case of any infringements of rights.
- 12.2 Production documentation, e.g. plans, sketches and other technical information, as well as models, catalogues, brochures, picture, etc. remain the property of the seller and are subject to standard legal stipulations with regard to reproduction, copying, competition, etc. Item 2.2 also applies to production documentation.

## 13. Miscellaneous

Should individual terms of this contract or their stipulations become invalid, this does not result in the invalidity of the remainder of the contract. The invalid term is to be replaced by one, which serves the purpose of the contract as closely as possible.

## 14. Competent court/applicable law

Any disputes arising from this contract, including those relating to its existence or non-existence, are to be dealt with exclusively by the competent court at the head offices of the seller in Vienna in the area of jurisdiction of the Inner City District Court. The contract is subject to Austrian law and further transfers of the case are excluded. The application of the United Nations UNCITRAL agreement concerning the international sale of goods is excluded.

# GENERAL CONDITIONS OF SALE



## 15. Copyright and usufruct

- 15.1 All photos, illustrations, text and other content, of both this homepage and the brochures, circulars, pamphlets and advertising of Banner GmbH and its sales companies, are subject to copyright.
- 15.2 Any type of application, use, reproduction, provision to the public, etc. requires the prior written approval of Banner GmbH.
- 15.3 The unauthorised use of pictures, illustrations, text and content subject to copyright in the either private or the business area, shall constitute an infringement of copyright and upon coming known will be met by a cease and desist warning, together with the assertion of claims for damages and legal action.

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